

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PATEL, et al.,	.
	.
Plaintiffs,	.
	. Case No. 14-cv-08127
vs.	.
	. Newark, New Jersey
PANDYA, et al.,	. September 10, 2015
	.
Defendants.	.
	.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARK FALK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Commencement of proceedings at 11:22 A.M.)

2

3 THE COURT: This is the case of Patel, et al.,
4 versus Pandya, et al.. it's Docket 14-8127.

5 May I have the appearances of counsel, please.

6 MR. JACOBS: Justin Jacobs, and Kathleen Barnett
7 Einhorn of Genova Burns for plaintiffs Jagdish and Kishan
8 Patel.

9 MR. RUSSELL: Ken Russell here on behalf of the
10 defendants plural, J. Pandya is accompanying me at the table,
11 and multiple entities, which are owned by Mr. Pandya were
12 sued in the matter.

13 I also represent Krupa Patel, an employee of
14 Mr. Pandya, who was also sued in the matter.

15 THE COURT: Okay. Well, we've had a number of
16 con- -- conferences and contacts. And there seemed to be a
17 certain level of dissatisfaction and problems with discovery,
18 et cetera. And indeed I had scheduled a conference at one
19 point, and I believe the defendants didn't appear, perhaps
20 through a scheduling error. But just given the tenor of the
21 discourse the last time I spoke off the record on the
22 telephone with counsel, I thought it best to address things
23 on the record at this point.

24 So I'll ask both -- I guess I'll begin with the
25 plaintiff. And we have a discovery end date, I believe of --

1 in December.

2 Is that correct?

3 MR. JACOBS: That's correct.

4 THE COURT: Is there anything that the plaintiffs
5 feel that they have not received in terms of discovery or
6 anything along those lines?

7 MR. JACOBS: Yeah, there are a few issues, one of
8 which is we received documents in connection with defendants'
9 Rule 26 disclosures. But those documents were all out of
10 order, so they were Bates-stamped, but we would, for example,
11 have Bates-stamped 1302, and then the next page would be, you
12 know, 1404. So there's no way to kind of read it in
13 Bates-stamped order.

14 We've asked a number of times whether or not we can
15 get it in Bates-stamped order. And we just haven't received
16 it. It's been, what, months now.

17 THE COURT: So -- I guess I can hear from the
18 defendants on that, but it seems to me you're here for that
19 purpose. So I can make any jury room available for you to go
20 in there and take care of that right now.

21 MR. JACOBS: I mean -- and then -- so in addition,
22 we served defendants with a deficiency letter with respect to
23 their interrogatories and document requests. We gave them, I
24 think, until next week to respond to that deficiency letter,
25 and then we -- if we aren't able to work out those issues, we

1 would like to raise those with the Court.

2 THE COURT: Well, I think you should work those out
3 today also in my jury room, and then later in the afternoon,
4 I can decide any issues, if I need to, if there is simple
5 questions like that.

6 What's next? Is there anything else?

7 MR. JACOBS: We have an issue where we issued a
8 subpoena to Paren Dixit, who's the accountant for a few of
9 the entities that are defendants in this matter. They were
10 told not to respond for a while. We've resolved those
11 objections. But that company has not responded to the
12 subpoena to date. We've told them that we're going to bring
13 a motion, if we need to. It's an outstanding discovery
14 issue. But it's not -- it's not an issue necessarily with
15 respect to the defendants at this time because we've resolved
16 their objections.

17 But I wanted to at least, you know, raise it so
18 it's on the record.

19 THE COURT: Okay. Good.

20 Is that all the plaintiff has?

21 MR. JACOBS: Yeah, and we were under the impression
22 that this was a settlement conference as well --

23 THE COURT: I'm going to get to that.

24 MR. JACOBS: Okay.

25 THE COURT: But, you know, I have other cases and I

1 | was ready to have a settlement conference the last time. I'm
2 | ready to have it again, and I will. But I wanted to see if
3 | there were things that in the interim were prior to the
4 | settlement conference, so you can go and confer, and so if
5 | we -- if we don't settle the case, I can resolve your
6 | discovery disputes, that way moving the case along, which I
7 | think is in everyone's interest. Okay?

8 | Defendant, do you have any issues?

9 | MR. RUSSELL: Well, let me just address those, the
10 | Paren Dixit matter is straightened out, so there'll be
11 | production -- whether they produce or not. If they don't,
12 | it's out of our hands.

13 | The renumbering of the 4,000 documents we provided
14 | to them, we indicated that we would renumber them. That's a
15 | second issue.

16 | We did get this week a 15-page deficiency letter
17 | from the plaintiffs, which frankly, I received and we're
18 | looking at. So I -- 15 pages' worth.

19 | That -- those are the three matters they had
20 | raised. We're more than willing to look at the deficiency
21 | letter and respond to it next week.

22 | So it sounds like the discovery issues, we will
23 | renumber the 4,000 pages we provided, and that's fine.

24 | With regard to our discovery, we provided them over
25 | 4,000 documents just on the Rule 26 disclosures. We've

1 received very few documents back, especially just pursuant to
2 the Rule 26 disclosures.

3 In addition, we had requests for production of
4 documents. We haven't received anything. We haven't even
5 received the emails that we sent to them that their clients
6 sent to us.

7 So the issue -- one of the issues in this case is
8 that when we -- when the plaintiff and defendant were going
9 to purchase a string of Pizza Huts up in Connecticut, that
10 you didn't provide me enough information in order to allow me
11 to understand what the transaction was, and then, in fact,
12 you defrauded me with the information you provided us.

13 So one of the key ingredients is that we receive
14 back from them everything that they received from us. It's
15 not good enough that we just sent them what we have. They
16 should send us what they received so that we have that,
17 Bates-stamped from them, and we'd say here's the 3,000
18 documents that we sent you so that you can do your due
19 diligence prior going into this transaction.

20 We haven't received any of those documents.

21 And -- and we didn't even receive back things that
22 we've already sent them.

23 So those -- that's -- that's the one issue.

24 We have -- so we haven't even received any of those
25 documents yet. And there are other documents that we're

1 expecting -- there was a subpoena issued, for example, and
2 they've received the documents pursuant to the subpoena. Our
3 agreement was that when they received those documents, they
4 would pass them right along to us.

5 Well, they've had them now for three weeks, and we
6 haven't received any of them.

7 I only raise these because what's happening is it
8 is becoming a pattern. I don't -- we're in the case. We're
9 litigating the case. We give them 4,000 documents, Rule 26,
10 we're giving them everything we have, and we're being
11 document-starved.

12 THE COURT: Okay. I understand that that's a --
13 we'll resolve those questions today.

14 MR. JACOBS: Yeah, and, Judge, we'd like to respond
15 to --

16 THE COURT: Yeah, I'm -- but at first I want you to
17 go and talk about it. See? In other words, I want you to go
18 and talk about them, because I have a lot of other people
19 waiting --

20 MR. JACOBS: Would you prefer that as opposed to --

21 THE COURT: Well, I wanted to hear what the issues
22 were.

23 MR. JACOBS: Okay.

24 THE COURT: But I mean, when we get -- I'll get
25 down to the specifics with you. I'll go over all the

1 documents.

2 MR. JACOBS: Okay.

3 THE COURT: I'm going to resolve your disputes
4 today.

5 MR. JACOBS: Excellent.

6 THE COURT: But I mean, it's not going to happen
7 immediately, so ...

8 MR. JACOBS: Understood.

9 THE COURT: Is there anything else you want to say
10 right now?

11 Okay. Thank you. Let's go off the record.

12 (Recess: 11:29 A.M. to 4:52 P.M.)

13

14 THE COURT: This is the case of Patel, et al.,
15 versus Pandya, et al., Docket 14-8127.

16 Could you please -- I know you were here this
17 morning -- could you please put your appearances on the
18 record, once again. And then you can be seated.

19 MR. PARIKH: Your Honor, Raj Parikh and Justin
20 Jacobs from Genova Burns LLC. I'll note for the record,
21 Your Honor, that I was on a plane this morning, I came right
22 from the airport, so my partner, Kathleen Einhorn was here
23 this morning, but I substituted in for her around
24 one o'clock.

25 THE COURT: Okay. Excellent. Thank you.

1 MR. RUSSELL: Your Honor, Ken Russell here on
2 behalf of J. Pandya and all of the defendants.

3 THE COURT: All right. Very well.

4 I mean, the parties appeared here in the morning,
5 and I think spent most of the day here. Apparently, there
6 were some outstanding discovery disputes, perhaps some other
7 kinds of disputes, and I understand that you have reached
8 some agreement, and you want to read something into the
9 record.

10 So feel free.

11 MR. RUSSELL: Yes, Your Honor.

12 THE COURT: You can be seated if you want to, just
13 to -- you know, for comfort's sake.

14 MR. RUSSELL: Yes, Your Honor, I have the initial
15 document agreement, and Raj will read in the -- the
16 agreements that we've had had on interrogatories, and then
17 we'll identify disagreements.

18 THE COURT: Okay.

19 MR. RUSSELL: So on Tuesday, September 17th, the
20 parties have agreed they will exchange and agree upon search
21 terms which will be utilized to conduct their ESI production.

22 All parties will produce relevant documents in
23 their possession, including but not limited to emails and
24 other electronic discovery conducted pursuant to the
25 agreed-to search terms on or before September 28th, 2015.

1 The production shall be Bates-stamped and produced
2 in Bates-stamped order.

3 On or before October 5th, the parties shall
4 identify documents needed to be produced in native format.

5 On or before October 19th, the parties shall
6 produce native-format documents pursuant to a mutually
7 agreed-to process.

8 On or before October 26th, the parties shall have
9 agreed to and conducted an inspection of the books and
10 records of CT Pizza. Your Honor, that primarily entails us
11 getting a date where the plaintiffs can come and inspect the
12 books and records, which we'll make available at our offices.
13 And then any and all -- well -- any and all interrogatory
14 responses shall identify the documents which are responsive
15 to that request. But I know Raj will get into that.

16 MR. PARIKH: Judge, we -- the plaintiffs agree with
17 all those dates.

18 The only other date I would -- I would put in,
19 Judge, is that the parties have agreed that any supplemental
20 interrogatory responses reflected by the agreements I'll read
21 in momentarily, will be provided by October 19th as well.

22 There are disagreements related to four
23 interrogatories of documents, Judge. Do you want us to deal
24 with those now, or you want to read all the agreements first
25 and then the disagreements?

1 THE COURT: You mean there's more agreements of
2 things?

3 MR. JACOBS: There are agreements on
4 interrogatories, specifically with respect to what's going to
5 be done.

6 THE COURT: Well, might as well -- if you want to
7 put them on the record that way, you can.

8 MR. JACOBS: Yeah --

9 THE COURT: I don't know how you -- you know,
10 normally things are formalized with an order. Now, you can
11 have an order that refers to what you put on the record. Or
12 you can have no order, if you don't feel an order is
13 necessary.

14 MR. RUSSELL: Your Honor -- Your Honor, maybe an
15 agreed-to order on interrogatories would be -- we can go back
16 and forth and submit an agreed-to order.

17 THE COURT: Or you can just have an order saying
18 for things that are -- for every -- for everything agreed on
19 the record.

20 MR. PARIKH: That's my preference, Judge.

21 THE COURT: And I'll sign it.

22 MR. PARIKH: Because there's a lot of details here.
23 So my preference would be to just read them in.

24 THE COURT: How long is it going to take you to
25 read into the record?

1 MR. PARIKH: I would say no more than three or four
2 minutes.

3 THE COURT: Oh, that's easy.

4 MR. PARIKH: Right.

5 THE COURT: Go ahead.

6 MR. PARIKH: So, Judge, with respect to plaintiff's
7 Interrogatory 2, the LLC defendants, as to the objection
8 Interrogatory Number 1, the parties -- the plaintiffs will
9 deal with that at a deposition.

10 As to Interrogatory Number 4, the parties have, as
11 counsel referred to, have agreed globally that to
12 interrogatories where the response relies upon documents that
13 have been produced, the parties will identify those documents
14 by specific Bates identification rather than providing a
15 summary of what the documents may state or whatever that may
16 be, and we've referred to that as the global agreement
17 regarding Bates identification.

18 So that is the way that the responses to
19 Interrogatory Number 4 of LLC defendants will be
20 supplemented.

21 And with respect to Interrogatory Number 6 of the
22 LLC defendant, they will supplement the response -- what the
23 parties have agreed to is that following the inspection of
24 the books and records, which is going to take place before
25 October 26th, following that, any supplemental questions

1 necessary will be directed to counsel and then can be
2 responded to in that manner.

3 That's it with respect to objections and issues
4 related to the LLC defendant interrogatories, Judge.

5 With respect to CT Pizza, the CT Pizza defendant
6 and the interrogatories there, plaintiffs have agreed to deal
7 with the objections to Interrogatory Number 1 at a
8 deposition.

9 The parties will identify documents referred to or
10 relied upon in response by Bates ID, that's that global
11 agreement as to Interrogatories Numbers 2, 5, 11, and 12.

12 As to Interrogatory Number 4, defendant has agreed
13 to withdraw the objection and identify the applicable
14 documents by Bates ID as well.

15 As to Interrogatory Number 6, CT Pizza has
16 previously sent correspondence regarding this issue and will
17 be sending supplemental correspondence that will serve as
18 their responses to interrogatory.

19 As to Interrogatory Number 10, once the books and
20 records are produced, then CT Pizza has agreed to respond to
21 supplemental requests based upon those books and records so
22 that the inquiry can be narrowed properly.

23 As to supplemental responses will be provided as to
24 Interrogatories 16 and 18.

25 As to Interrogatory 19, CT Pizza has affirmed that

1 it has only been sued once, related to open invoices.

2 Those are the issues with respect to the CT Pizza
3 defendant, Your Honor.

4 With respect to defendant Krupa Patel, Your Honor,
5 plaintiffs have agreed to withdraw their objections and rely
6 on deposition questions for Interrogatories 1, 2, 3, 6, and
7 10.

8 The Interrogatory Number 5 will be supplemented by
9 Ms. Patel with the global Bates identification agreement.

10 Ms. Patel has agreed to clarify in Interrogatory
11 Number 7 that the loan documents referred to in the answer
12 are the CT Pizza financing documents that were executed by
13 Mr. Pandya.

14 As to Interrogatory Number 12, Ms. Patel has agreed
15 to supplement that response.

16 Those are the only issues, Your Honor, with respect
17 to defendant Krupa Patel's interrogatories.

18 With respect to defendant J. Pandya's interrogatory
19 responses, the parties have agreed that Interrogatory
20 Responses 2, 5, and 11 will be supplemented pursuant to the
21 global Bates identification agreement, have agreed that the
22 response to Interrogatory Number 14, that Mr. Pandya will
23 provide a privilege log and identify any other responsive
24 documents by Bates number.

25 Mr. Pandya has agreed to supplement his responses

1 to Interrogatory Number 20 and 22.

2 And as to Interrogatory Number 9, Mr. Pandya has
3 agreed that following the inspection of books and records,
4 that plaintiffs can submit follow-up requests and get more
5 specific answers.

6 There are agreement -- disagreements, Your Honor,
7 with respect to Mr. Pandya's responses to Interrogatory 1,
8 12, 17, 18, and 23. Other than those, there are no other
9 open issues with respect to Mr. Pandya's interrogatory
10 responses.

11 And, finally, Judge, with respect to the
12 interrogatories propounded by defendants, do you have an
13 issue? Or no? I thought you were standing because you
14 panted to stay something.

15 MR. RUSSELL: No, no, no. Go ahead. I'm --

16 MR. PARIKH: Okay. All right.

17 Judge, finally with respect to the interrogatories
18 propounded by defendants upon plaintiff Jagdish Patel, the
19 parties have agreed or plaintiff has agreed that Mr. Patel
20 will supplement his responses to Interrogatories Number 2, 5,
21 and 19.

22 With respect to Interrogatory Number 25, Mr. Patel
23 has agreed that he will identify by name and docket number
24 and court any lawsuits where him or Kishan Patel, the other
25 plaintiff, have been named as a party in the last five years.

1 Interrogatories Number 8, 9, and 12, will be
2 supplemented pursuant to the global Bates-stamping -- Bates
3 identification agreement of the parties.

4 And with respect to the Interrogatory Number 10
5 served on Jagdish Patel by the defendants, the defendant has
6 withdrawn all but the last sentence of that interrogatory,
7 and Mr. Patel will supplement his answer accordingly.

8 There are issues that have been raised with respect
9 to Jagdish Patel's responses to Interrogatory Number 6, 11,
10 13, 16, 17, 18, 23, and 24. Other than that, the defendants
11 have not identified any other deficiencies in the plaintiffs'
12 interrogatory responses, Judge.

13 THE COURT: Thank you.

14 MR. RUSSELL: That is accurate, Your Honor.

15 THE COURT: Okay. Thank you.

16 MR. RUSSELL: So, you know, Judge with respect to
17 the document issues, there are really four of them. One is
18 related to plaintiffs' request for documents related to a
19 lawsuit that had been previously filed in the Eastern
20 District of Pennsylvania against the defendant regarding
21 fraud.

22 The second issue --

23 THE COURT: Well, what's the issue there? Why
24 don't you just give him the docket number -- the defendant
25 will give plaintiff the docket number and the parties, and

1 then you can get the information from it. What about that?

2 MR. RUSSELL: And that's fine, Judge. The one --
3 the one thing we wanted from that is the settlement agreement
4 as well in that lawsuit. We understand there's a settlement
5 agreement. We're happy to serve a subpoena on that.

6 THE COURT: But why is that relevant? I mean, how
7 is a settlement -- I mean, you'd have to show that's
8 relevant, and you have to be relevant to a claim or defense
9 in the case.

10 Now you have a case here where you're -- you know,
11 you're claiming fraud and RICO and fraudulent inducement
12 regarding, you know, deliberately deceiving the plaintiffs
13 into investing into joint ventures which include all these
14 Pizza Huts.

15 So they had a lawsuit in Pennsylvania -- I know I
16 didn't give you a chance to speak, Raj, yet, but I will.

17 And the question is the standard of discovery,
18 although liberal, has to be relevant to a claim or defense.

19 So the fact that they were sued, you know, I think
20 that's -- first of all, it's a matter of public record, and
21 it's fine. But how does this settlement -- how does that
22 really play into -- how is that relevant to a claim or
23 defense.

24 MR. RUSSELL: Just so Your Honor's aware, there's a
25 suit involving Mr. Pandya and Dunkin' Donuts and suit

1 involving the plaintiff and Dunkin' Donuts.

2 So I -- my position on this is whatever the Court
3 decides on one, it's -- it's the same issue, because they're
4 looking for documents related to our litigation with Dunkin'
5 Donuts. We're looking for documents related to their
6 litigation for Dunkin' Donuts. And that's --

7 THE COURT: So these are both Dunkin' Donuts as
8 opposed to Pizza Hut? Or are they the same?

9 MR. RUSSELL: These are both Dunkin' Donuts, who
10 both were franchisees.

11 THE COURT: With the same parties? Or different
12 parties or what?

13 MR. RUSSELL: Different parties. My client
14 continues to be a franchisee. Plaintiff dis -- has
15 discontinued his franchisee. So --

16 MR. PARIKH: Judge, first -- the --

17 THE COURT: Okay.

18 MR. PARIKH: -- the request for records from that
19 lawsuit was made for the first time today at the
20 meet-and-confer conference. There's never been a written
21 interrogatory --

22 THE COURT: Okay.

23 MR. PARIKH: -- or anything like that. But -- but
24 with respect to Your Honor's question, to answer it directly,
25 what's the relevance of that lawsuit and some of the

1 information in that lawsuit --

2 THE COURT: Yeah.

3 MR. PARIKH: -- is that part of -- part of the
4 allegation here is that there has been a pattern of fraud
5 that the defendants have engaged in and that they've done it
6 over a number of years through a -- with a variety of
7 sources.

8 And the allegations in the complaint of that
9 lawsuit are similar to the allegations in this lawsuit. And
10 we believe that by exploring what occurred in that situation,
11 despite the fact that that case settled, that we will be able
12 to -- have better information about defendants' pattern of
13 fraud as it has continued, started then and then continued
14 into his -- his new fraudulent attempt to the plaintiffs in
15 this case.

16 One of the issues that -- that is related to that
17 is that in the Dunkin' Donuts complaint, there is a reference
18 to Investor 1, Investor 2, and Investor 3, almost like you'd
19 see in a criminal complaint where a cooperating witness is
20 not identified by name.

21 And what we've asked is for -- for the defendants
22 to identify that person.

23 Now, if defendants are unable to, due to
24 confidentiality or whatever it may be, we're happy to serve a
25 subpoena on Dunkin' Donuts for the file related to that and

1 fight out the confidentiality issues with respect to the
2 subpoena and limit it so that's pursuant to the protective
3 order, attorney's eyes only, whatever -- whatever is
4 necessary. But we do believe that -- that those records,
5 given the allegations in the complaint, which we have the
6 complaint, but given the allegations in the complaint, which
7 is publicly filed, as Your Honor mentioned, we believe that
8 the information related to -- to that case is either directly
9 relevant to the allegations here of a pattern of racketeering
10 conduct by the defendant entities and the defendant -- the
11 individual defendants as well, or that it could lead to --
12 likely lead to the discovery of admissible evidence.

13 THE COURT: But how does it -- I hear you. But how
14 does it -- the settlement -- I mean, that seems like
15 something that, you know, first of all, there's a certain
16 protection under the law for settlement, as you know.

17 MR. PARIKH: Of course.

18 THE COURT: I mean that could never be evidential.
19 But I mean, I'm still not sure how -- you know, people settle
20 complaints and cases for all kinds of reasons, not the least
21 of which would be the expense, which both of the parties
22 sitting here should be considering. We're just -- you just
23 spent a whole day on interrogatories, but --

24 MR. PARIKH: Of course.

25 THE COURT: -- but how is the settlement of that

1 case relevant? I mean, I --

2 MR. PARIKH: To be -- right, no, and I'll --

3 (Simultaneous conversation)

4 THE COURT: -- maybe you'll have to put in papers,
5 but go ahead.

6 MR. PARIKH: I can be very blunt about it, Judge.

7 THE COURT: Yeah, let's be blunt.

8 MR. PARIKH: If -- if they're able to identify
9 Investor 1, 2, and 3 and the people that were involved that
10 alleged the fraud that pro -- you know, caused Dunkin' Donuts
11 to file this lawsuit against the defendants, I don't think we
12 need the settlement agreement. But primary- -- the primary
13 purpose of obtaining that would be to identify the other
14 individuals involved in that lawsuit or the allegations that
15 form the basis of that lawsuit.

16 MR. RUSSELL: Your Honor indicated when we
17 initially talked about the RICO claim in chambers, you kind
18 of rolled your eyes and said you don't have a RICO claim.
19 The long and short of it is this is the only evidence upon
20 which they base a RICO claim.

21 If there was any fraud in here and there was a suit
22 against Dunkin' Donuts against my client, my client still
23 wouldn't be a franchisee.

24 The bottom line is they were guessing about the
25 predicate act. They're hoping to get this to go fishing. I

1 have no problem, if Your Honor's looking at them saying they
2 can't get our confidential settlement with regard to Dunkin'
3 Donuts in which my client continues to be a franchisee. And
4 you look at us and say you can't get their agreement.

5 Now, he was kicked out of the Dunkin' Donuts
6 franchise as a result of his lawsuit. So Dunkin' Donuts
7 treated them very differently.

8 And I'll let you figure out which is going to be
9 the predicate act.

10 But this is a total guess about this lawsuit and --
11 and what it was and what it resulted in.

12 THE COURT: Well, I mean, did -- is the plaintiffs'
13 lawsuit or the lawsuit against the plaintiff, was that
14 involved by settlement or a judgment?

15 MR. PARIKH: The lawsuit that plaintiff was
16 involved with Dunkin' Donuts, Your Honor, was -- I think it
17 was filed back in 1998 or so.

18 THE COURT: Yeah.

19 MR. PARIKH: It was resolved by settlement in 2003
20 as well.

21 But -- but with respect to that request which was
22 made today, as I noted --

23 THE COURT: Yeah.

24 MR. PARIKH: -- what our objection has been that
25 that's not relevant to any of defendants' claims or defenses

1 | in this case. Whether -- you know, our basis for seeking the
2 | information related to this one lawsuit of defendant is that
3 | there's allegations of fraud. There's -- you know, here,
4 | there's -- there's really no relevance. And we've agreed to
5 | produce the -- the names of all lawsuits that the plaintiffs
6 | have been involved in the last five years. I don't know why
7 | we need to go back --

8 | MR. RUSSELL: And it would be --

9 | MR. PARIKH: -- 15 years to get the information.

10 | MR. RUSSELL: -- it would be our position that that
11 | agreement not only had fraud allegations but resulted in the
12 | plaintiffs' elimination as a franchisee, and he's presently
13 | in violation of that presently.

14 | So that indicates when -- where indicating fraud,
15 | we believe there's a present fraud being committed on Dunkin'
16 | Donuts as a result of that.

17 | And I'm --

18 | THE COURT: Well, let me ask you a question,
19 | Mr. Russell. First of all, I just want to make one thing
20 | clear. I mean, if I -- I may have rolled my eyes in chambers
21 | and -- but, you know, a lot of what magistrate judge is --
22 | does is informal. And we're here on the record today.
23 | But --

24 | MR. RUSSELL: Yeah, I maybe I should --

25 | THE COURT: You -- no, that's fine that you said

1 that. I have no problem. But it doesn't -- just for your
2 clients, it doesn't have much meaning.

3 Judge Martini on July 27th denied a 12(b)(6)
4 motion, as I recall.

5 So whatever's in the pleading is in the pleading.
6 And until you get to summary judgment or trial or whatever,
7 it's there.

8 So I -- you know, I just want to make -- just so
9 we're clear on that, regardless of what I might think.

10 But I guess, it's a little hard to maybe to do this
11 right off the top of my head. I'm trying, just for your own
12 benefit and your clients' benefit, you spent so much time
13 here, are you willing to -- Mr. Russell, is your client
14 willing to identify have the number -- persons 1, 2, and 3?
15 That seems to be what they're asking for. Are you willing to
16 identify that or not?

17 MR. RUSSELL: Well, I think, Your Honor, we were
18 looking for -- if the Dunkin' Donuts suits are relevant, then
19 the Dunkin' Donuts are relevant.

20 I -- my understanding too -- by the way, the
21 implication it's criminal, Dunkin' Donuts, apparently, names
22 parties in that manner so that people's names aren't on the
23 dockets. So, apparently, they -- they do that, and that's a
24 specified way of doing it. It wasn't done for any hidden
25 reason. Everybody knew who they were. They were just named

1 in a specific fashion.

2 But if we -- if Your Honor -- I have no problem
3 with if Your Honor believes both Dunkin' Donuts information
4 is relevant and open discovery to everybody about what's
5 going on, make the decision later on about things not being
6 relevant, you know, that's not a problem with us.

7 THE COURT: I don't know how to handle -- I am
8 not -- I mean, maybe you have to put this in writing, I hate
9 to do that. But --

10 MR. PARIKH: Yeah --

11 THE COURT: -- only because I am not -- it's all so
12 general right now. I don't know.

13 MR. PARIKH: It is, I understand.

14 THE COURT: I mean, are you willing to produce your
15 Dunkin' Donuts case?

16 MR. PARIKH: Honestly, the problem with that,
17 Judge, is that the case was so long ago, and it really is
18 not -- you know, the -- we have a claim of fraud, RICO, Judge
19 Martini found that it was adequately pled.

20 THE COURT: Yes.

21 MR. PARIKH: And they don't. They have a
22 counterclaim --

23 THE COURT: Right.

24 MR. PARIKH: -- that says we owe money on capital
25 calls. What --

1 (Simultaneous conversation)

2 MR. RUSSELL: And a fraud claim. And a fraud
3 claim.

4 MR. PARIKH: And -- and -- but related to -- to the
5 plaintiffs' --

6 (Simultaneous conversation)

7 MR. RUSSELL: -- his -- your plaintiffs' fraud.

8 MR. PARIKH: The counterclaim, Your Honor.

9 THE COURT: Can you -- can you do me a favor? Can
10 I just -- could you put it on hold, Lorraine?

11 (Pause in proceedings)

12 THE COURT: Are we back? Okay. We're back on the
13 record. I'm sorry.

14 But you were saying? Yeah, there --

15 MR. PARIKH: Yeah, no problem, Judge.

16 So -- so I viewed -- if you want it -- and that's
17 two of the four issues on documents, Judge, is Dunkin'
18 Donuts, our request for the lawsuit information Dunkin'
19 Donuts from defendants and their request.

20 I view them as mutually exclusive issues. We have,
21 as I mentioned, allegations of fraud and RICO. Complaint
22 that we're trying to seek information from, the identity of
23 those investors, was a complaint that sounded in fraud.

24 Defendants' counterclaim has alleged -- and it was
25 just recently filed so we haven't even responded to it yet,

1 but has alleged fraud, although we don't think it's pled with
2 specificity, but it's alleged fraud that -- and the
3 allegations of fraud are that plaintiffs in entering into
4 this agreement with the defendants to purchase these
5 franchises in Connecticut, didn't actually have enough money
6 to pay capital costs. That's the allegation of fraud.

7 I don't know how on earth a lawsuit against Jagdish
8 Patel, which was filed 15 years ago could provide any
9 discoverable information related to that counterclaim, even
10 if it was read in the broadest terms of -- in the benefit of
11 the pleading party, which is the defendants here.

12 So we would think that there's a -- there's an
13 adequate basis to compel the defendants to identify Investor
14 1 and 2 -- 1, 2, and 3, from that Dunkin' Donuts lawsuit is
15 to provide additional information regarding that lawsuit, to
16 the extent it's not publicly available, and -- and at the
17 same time, we would -- we would note we don't believe that
18 plaintiffs [sic] have satisfied even that minimum threshold
19 required to obtain discovery from the plaintiffs regarding
20 such an old lawsuit because, really, all that would be would
21 be a fishing expedition for irrelevant information.

22 THE COURT: Yeah. I don't know. I mean, let me
23 ask you a question. This 1, 2, and 3 business, they were
24 name parties in the case?

25 MR. JACOBS: No, I believe --

1 -- MR. RUSSELL: They're just a -- name.

2 MR. PARIKH: I believe what happens, Judge, in
3 those cases, typically is that if -- if someone -- if someone
4 feels as though that they're a minority investor in a Dunkin'
5 Donuts and they feel as though they're being taken for a ride
6 by their majority investor, they'll report it to Dunkin'
7 Donuts directly. Dunkin' Donuts then conducts an
8 investigation and files a lawsuit.

9 MR. RUSSELL: Yeah, and you'll see -- Dunkin'
10 Donuts, my client continues to be -- again, this apparently
11 is a predicate act where Dunkin' Donuts sues my client and
12 whatever happened, he's still a franchisee.

13 In their case, they have a -- Dunkin' Donuts sues
14 the plaintiff. He's terminated as a franchisee. So that --
15 if you want to figure out which one Dunkin' Donuts thought
16 was wrongdoing or committed fraud in that, it's not my
17 client.

18 In addition to that, yes, we're alleging fraud.
19 And that's -- those -- those -- we believe that Dunkin'
20 Donuts found fraud, and that's why he's terminated from the
21 system.

22 My client continues to remain a good-standing
23 member of that entity.

24 So if Your Honor looks and says both are relevant,
25 pursuant to, you know, those standards, both are relevant.

1 THE COURT: Well, I'll -- you know, I can't tell
2 from what you're just saying here. They seem to be -- I'll
3 be honest with you, both of them seem to be on the -- the far
4 outer reaches of possible relevance. None of them seem to be
5 too relevant to the claim here. I mean, they're different
6 cases. You know? I don't know.

7 If you want to put it in a letter or something,
8 I'll do it. I don't -- is it worth your time and expense to
9 do this, to fight over Dunkin' Donuts cases? Maybe. That's
10 up to you. It's hard to do it just sitting here.

11 MR. PARIKH: I --

12 (Simultaneous conversation)

13 THE COURT: -- you know, I can't tell. I don't
14 really know about that.

15 MR. PARIKH: Absolutely.

16 THE COURT: I know your complaint basically, what
17 it's about, but what some prior litigations and Dunkin'
18 Donuts have to do with it, it's kind of hard to do. So if
19 you want to raise that, you can put it in double-spaced
20 letters --

21 MR. PARIKH: Sure.

22 THE COURT: -- with the exact question and, I guess
23 what the answer is or what -- you're seeking to be
24 convince -- to compel.

25 MR. PARIKH: Yeah, maybe it's just a --

1 (Simultaneous conversation)

2 THE COURT: -- double-spaced, and I'll take a look
3 at it and I'll make a decision.

4 But what you should address there, very clearly and
5 directly and briefly is what claim or defense in this case is
6 the information you're seeking on both sides relevant to.
7 And I'm having a hard time really understanding that at the
8 moment. It's -- you know, I can see where, you know,
9 speaking perhaps more practically than just pure legally, you
10 know, if there were other lawsuits significance franchisees,
11 you know, you're trying to show that the -- perhaps there's
12 some negative information in there or that -- that could be
13 used. But I mean, does it really have to do with the claims
14 in the complaint and the defenses alleged or the counterclaim
15 here? I can't tell exactly from what you're saying. I just
16 can't.

17 So I'm afraid I can't -- I'd like to resolve that
18 for you. But if you really want to -- if you think that's
19 worth proceeding with that one, I think you're going to have
20 to put together a little -- you know, a double-spaced letter
21 on it.

22 What's the next dispute that you have?

23 MR. PARIKH: There's a dispute, Judge, defendant
24 today also again for the first time raised that he would like
25 plaintiffs' bank records prior to the closing of CT Pizza,

1 the acquisition of CT Pizza.

2 THE COURT: What possible relevance does that have,
3 Mr. Russell? That --

4 MR. RUSSELL: Well.

5 THE COURT: -- that's the kind of thing you usually
6 get after there's a judgment or on your counterclaim, I mean.
7 You can't usually ask for -- I guess you're going to explain
8 it to me. I didn't give you a chance yet. But you can't --
9 you ask for how much money people have or how they spend
10 their money unless you have a real --

11 MR. RUSSELL: It's not -- it's not going after the
12 judgment, Your Honor, part of the claim is not only did my
13 client and the plaintiff enter into partnership to purchase
14 existing Pizza Hut franchises --

15 THE COURT: Pizza Huts.

16 MR. RUSSELL: -- but there was also an agreement to
17 build, a requirement to build an additional -- I -- how many?
18 Initial 20 new Pizza Hut restaurants.

19 THE COURT: Build.

20 MR. RUSSELL: Build.

21 THE COURT: 20 new Pizza Huts.

22 MR. RUSSELL: 20 new Pizza Hut restaurants.

23 So the -- the information given to my client was,
24 yeah, because it was -- one total deal, Pizza Hut was going
25 to allow them this -- without agreeing to build 20 new ones.

1 So my client essentially looked at plaintiff and said,
2 listen, we're going in here, but you know there's a lot of
3 capital that's required to build 20 Pizza Hut restaurants.
4 And he made representations that, in fact, he did have that
5 capital necessary.

6 Obviously, my client now has \$2.4 million
7 additional in capital in this project. The plaintiff hasn't
8 made any of the capital calls. We believe that plaintiff
9 gave us -- it was fraud in the inducement, told us that he
10 had the resources to build out the 20. Now he's not
11 providing any money towards the 20. In fact, we were -- that
12 development agreement has now been terminated by Pizza Hut.
13 My client's personally responsible for those obligations.
14 Plaintiff is not. Only my client is personally responsible.
15 That agreement was terminated. He's now obligated to do
16 that.

17 THE COURT: I guess -- go ahead, Mr. --

18 MR. PARIKH: Judge, none of the allegations
19 regarding the development agreement are in the counterclaim.
20 Not one.

21 The counterclaim is entirely focused on capital
22 calls.

23 THE COURT: On what?

24 MR. PARIKH: On capital calls.

25 MR. RUSSELL: Capital calls.

1 MR. PARIKH: On capital calls for the entity. If
2 the entity's losing money, then the -- the individuals are
3 responsible for contribute money.

4 And the operating agreement, which governed this
5 entity, has -- you know, has a backup plan, basically that if
6 a member does not pay its capital calls, then their ownership
7 value gets diluted. It's -- you know, straightforward in
8 that sense.

9 And this is presuming everything in their
10 counterclaim is true, which, obviously, we dispute.

11 But there's not one allegation in the entire
12 counterclaim that relates to the development agreement and
13 obligation. I don't know how on earth our perm banking
14 records could be relevant. From -- from before the closing.

15 THE COURT: Well, I -- it seems far-fetched in
16 certain respects. I guess there could be a question whether
17 it be at a deposition or otherwise. I am not going to tell
18 you how to take depositions or how to do your discovery as to
19 what Mr. Russell said; in other words, asking Mr. Patel
20 whether he represented at some time that he had the capital
21 or the wherewithal to build or finance 26 or however many new
22 Pizza Huts. And if the answer was yes -- and if the answer
23 was no, that changes it around. If the answer was yes, I
24 guess you could ask for -- you know, sort of give an outline
25 of where -- where the -- you know, of the basis for your

1 statement that you had the capital. I don't know if that's
2 in the pleading. You're saying that's not even in the
3 pleading anywhere or what?

4 MR. PARIKH: The only allegation in the
5 counterclaim, Judge, relates exclusively to -- to these
6 capital calls and defendants' allegation that the plaintiffs
7 had a deal to be 25 percent owners of these entities in
8 Connecticut and that they owe -- that plaintiff has been
9 responsible for putting in \$2.4 million in capital calls and
10 that defendant has not contributed their -- their share, and
11 that defendants were fraudulent in saying that they had the
12 money to make those capital calls.

13 MR. RUSSELL: And we -- and we fund the development
14 agreement through requests of the partners to put in money to
15 the business through capital calls.

16 MR. PARIKH: It's not in the -- it's not in the
17 counterclaim, Judge.

18 THE COURT: Pardon me.

19 MR. PARIKH: It's not in the counter -- that's not
20 in the counterclaim.

21 MR. RUSSELL: The ability --

22 (Simultaneous conversation) that's how --

23 MR. PARIKH: It's not alleged in the counterclaim.

24 MR. RUSSELL: That's how a partner makes a request
25 of another partner to finance the business, including the

1 operating agreements, capital calls, \$2.4 million later,
2 plaintiff has not made one. So whether it's the op- --
3 whether it's the development agreement, whether it's the --
4 it's the rent, maybe it's the payroll, my client's \$2.4
5 million in and that's what the capital call is. Anyway.

6 MR. PARIKH: I think, Judge, I think what you
7 articulated in terms of asking did the deposition, and then
8 if --

9 THE COURT: Yeah, I --

10 MR. PARIKH: -- at that point, there's documents
11 that are needed --

12 MR. RUSSELL: I'm more than happy to ask him at the
13 deposition.

14 THE COURT: I think it is -- you know, I know you
15 did resolve some of your other disputes by referring to
16 things at deposition. But I think that really one -- I mean,
17 to just -- even -- even you say his -- his bank account or
18 which bank account, and then -- well, maybe he has another
19 brokerage account or maybe he was going to borrow the money
20 from his cousin or may have been he was going to borrow the
21 money from, you know, Wells Fargo or -- who knows? I'm just
22 trying to say that that one bank account, if it is one, you
23 know, I think is -- I am not sure that goes directly to --

24 MR. RUSSELL: I'll wait and ask that through
25 depositions, Your Honor.

1 THE COURT: I think you have to do it. You may
2 come back to me and say, yeah. At that point, we may want to
3 see some documents.

4 But I can't say that one at the moment.

5 What's next?

6 MR. PARIKH: So, Judge, the last issue is an issue
7 that we had raised with Your Honor on a telephone conference
8 quite some time ago regarding the plaintiffs' belief that the
9 defendant improperly obtained confidential business records
10 of the plaintiff. And we have -- I think it may be easier to
11 identify how that's going to be resolved in -- in the
12 interrogatories, because there are interrogatory issues
13 there, but that is a document issue as well, but if we can --
14 if you want to go through the interrogatories, then,
15 obviously, we can deal with it at that point in time, in
16 terms of the objections that Your Honor --

17 MR. RUSSELL: Your Honor, we have probably 15 to 20
18 interrogatories -- I don't know whether you'd -- Your Honor
19 wants that in a letter and a phone call or wants it now.

20 THE COURT: I mean, how -- how difficult are they?

21 MR. PARIKH: I think some of them may be difficult,
22 Judge. And -- and, you know, I still believe -- I think
23 there are some where just given the late hour, that perhaps
24 we did need to meet and confer as -- as we should have.

25 THE COURT: Yeah, well, look, I think you're right.

1 It's getting late. And I'm -- you know, they close the
2 courthouse, and I want to get you folks on the road and out
3 of town at a reasonable hour.

4 And -- so let's take that up, if you want, by
5 letter or at another conference. We can have other
6 conferences.

7 MR. PARIKH: Okay. Interrogatory -- well, why
8 don't we -- we'll talk, Judge.

9 THE COURT: Is there anything else right now you
10 want to put on the record? Because I want to just talk to
11 you off the record for a minute.

12 Go ahead.

13 MR. PARIKH: There's only two other things, Judge.
14 There is -- we resolved an issue related to a third-party
15 subpoena to Bob Nathan, earlier -- and counsel and I know
16 what that agreement was. Basically we agreed to language for
17 one paragraph limiting it, and there's an agreement between
18 the parties respect to certain third-party subpoenas that if
19 there's a need to seek additional information from those
20 third parties based upon their initial productions, then
21 there's no waiver of the ability to do that.

22 And then the last thing, Judge, is that earlier
23 this week, I was out of the country on business, but we
24 received notices of third-party subpoenas, I think six of
25 them from plaintiffs [sic]. We haven't yet had the

1 opportunity to review those. But we'll meet and confer on
2 those as well.

3 But other than those issues, Judge, there are no
4 other outstanding discovery issues between the parties.

5 THE COURT: Well, good, I want -- I mean, I just
6 want to thank you for spending the time and working so hard
7 on it today.

8 Let's go off the record.

9 (Conclusion of proceedings at 5:25 P.M.)
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Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 40 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

30th of September, 2015

Signature of Approved
Transcriber

Date

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